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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of) MM DOCKET NO. 93-51 ✓
MARTHA J. HUBER) File No. BPH-911114ME
RITA REYNA BRENT) File No. BPH-911115MC
MIDAMERICA ELECTRONICS SERVICE, INC.) File No. BPH-911115ML
STATON COMMUNICATIONS, INC.) File No. BPH-911115MU
For Construction Permit for a)
New FM Station on Channel 234A)
in New Albany, Indiana)

MEMORANDUM OPINION AND ORDER

Issued: May 6, 1993; Released: May 7, 1993

Background

1. This is a ruling on a Motion To Compel Production Of Documents that was filed on April 16, 1993, by Martha J. Huber ("Huber") seeking discovery of documents of Rita Reyna Brent ("Brent"). A Partial Opposition was filed by Brent on April 27, 1993.

2. A Supplemental Document Request was made by Huber on April 16, 1993, seeking documents relating to any future employment. On April 27, 1993, Brent responded that she had no such documents and she represented that none exist. There is nothing further to decide on Brent's employment documents.

3. The Motion To Compel relates to financing documents and to a document for which the attorney-client privilege is claimed.

Facts

4. Brent stated in her application Form 301 that financing in the amount of \$180,000 would be supplied by herself and her husband, Robert Brent. Brent provided no "financing documents" in her standard production. And Brent has not produced a letter from her communications counsel dated January 3, 1992, which she described as follows:

Discussion of fee arrangement between Brent's lawyer and Brent.
Analyses of comparative criteria. Page one and twelve only are exchanged.

5. In the first exchange, Brent had redacted matter in the letter relating to fee arrangements between counsel and Brent. By letter dated April 27, 1993, counsel for Brent furnished counsel for Huber with a second copy of

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the letter which now includes disclosure of the fee arrangement. The analyses of the comparative criteria remained redacted. There has been no submission of the letter to the Presiding Judge for in camera inspection. Huber seeks to have an in camera inspection and Brent opposes one on the assertion that the description above is sufficient to establish the privilege.

6. With respect to evidence of financing, the standard document production required under the Commission's rules includes:

All bank letters and other financing documents with the dollar amount unexpurgated[.]

47 C.F. R. §1.325(c)(1)(v). Huber posits the proposition that when the Commission instituted the standard document production procedure, the production of documents contemplated to be in the possession of a self-financing applicant would be included in the standard production. Cf. Revision of Application for Construction Permit for Commercial Broadcast Station [FCC Form 301], 4 F.C.C. Rcd 3853, 3868 n.68.(1989) wherein the Commission required that when applicants certify affirmatively, they must have on hand:

...a balance sheet of the applicant; net income statements for the past two years; itemization of all applicant's deposits; financial statements for all persons who agreed to furnish funds, purchase stock, extend credit or guarantee loans;

Huber contends that Brent did not even exchange a statement as to whether or not such documents exist. Brent states in her opposition that she does not possess any such "financing documents" which are subject to the standard production.

Discussion

7. With respect to the privileged document, it appears to have been cured with the voluntary disclosure by Brent of the fee arrangement. There is no need to conduct a review in camera given the description of the document that was authored by counsel and which described for the client the comparative criteria. Huber is correct in noting the deficiency in the explanation which fails to provide case law and specificity of the claimed exemption. However, the description is self-evident of protected legal advice and no more need be stated under that circumstance.

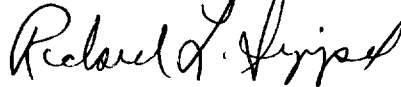
8. Brent notes that Huber has not disclosed cost estimates, balance sheets or net income statements. Brent will not be required to make such disclosures. The relevance of the requested financing documents to the standard comparative issue is whether there may be an undisclosed principal involved whose identity would show up on financing records. Brent has disclosed that her husband will share in the expenses. Huber may explore on deposition the extent of the spouse's participation. The standard production requires the turning over of all "financing documents" and it appears that Brent has responded to that requirement. Huber can seek reasonable

clarification at Brant's deposition that there has been a complete production of the documents. Therefore, there is nothing to consider further.¹

Ruling

Accordingly, IT IS ORDERED that the Motion To Compel Production Of Documents filed on April 16, 1993, by Martha J. Huber ("Huber") IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Administrative Law Judge

¹ Huber cites no authority for the proposition that "financing documents" under the standard document production include those enumerated for certification of Form 301. Of course, the parties may stipulate to the voluntary exchange of all documents under the Form 301 standard. But such an expansive interpretation of the standard production will not be applied.